IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5235 OF 1988
Along with
Civil Application No.2113 of 2004

Sajuram Mahadeo Kalnekar,
since, deceased through heirs
1A) Laxmibai Baba Kalnekar and ors .. Petitioners.

Vs

Hasan Ibrahim Karol and ors. .. Respondents.

Mr G.R.Rege with Mr S.M.Railkar, for the petitioners.
Mr G.J.Sabnis, for the respondent no.1.

CORAM : D.B.BHOSALE,J.
DATE : 08.03.2007

ORAL JUDGMENT:

1. The petitioner-tenant has taken exception to a judgment and order dated 30.6.1988 rendered in Civil Appeal No.72 of 1986 by which the appeal of the respondent no.1 was allowed. By this appeal, the respondent-landlord had challenged a judgment and order dated 26.2.1986 passed by the trial Court dismissing a Regular Civil Suit No.97 of 1983 instituted by them for possession of the suit premises on the ground available under section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, "the Bombay Rent Act").

2. The suit was filed against two tenants. The petitioner-tenant was defendant no.2 in the suit. As a matter of fact, two independent suits were filed by the landlord, being Regular Civil Suit Nos.97 of 1983 and 117 of 1984 and in both the suits, both tenants were added as party-defendants. In Regular Civil Suit No.97 of 1983, the present petitioner was defendant no.2, whereas in Regular Civil Suit No.117 of 1984 he was defendant no.1. Regular Civil Suit No.97 of 1983 was disposed of by a reasoned order whereas in Regular Civil Suit No.117 of 1984 no separate reasons were recorded. Hereinafter I would refer the present petitioner as defendant no.2 and respondent no.1 as the landlord.

3. The trial Court recorded its findings in the affirmative on the point whether the landlord proved that he requires the suit premises reasonably and bonafide for his personal occupation and for the occupation of his family members. On the point of greater hardship also the trial Court recorded its findings against defendant no.1-tenant. As far as the present petitioner-defendant no.2 is concerned, the trial court held that greater hardship would be caused to him and not to the landlord and dismissed the suit on this count. Against the backdrop of these findings, the landlord filed Civil Appeal No.72 of 1986 challenging

the finding on the point of greater hardship under section 13(2) of the Bombay Rent Act. Similarly, defendant no.1 filed Regular Civil Appeal No.79 of 1986 against the decree of eviction passed by the trial Court on the ground under section 13(1)(g) of the Bombay Rent Act. Both the Appeals were disposed of on the very same day, but by the separate judgments. Though in both the appeals, both the tenants were parties, the case of the landlord against defendant no.2 on the point of bonafide requirement was neither under consideration nor was it dealt with by the appellate court. In Civil Appeal No.72 of 1986 of the landlord against defendant no.2, the point of comparative hardship alone was considered by the appeal court. Defendant no.2 did not file a separate appeal challenging the findings of the trial Court on the point of bonafide requirement nor did he file cross-appeal/objections in the appeal filed by the landlord against the dismissal of his suit on the point of hardship. In short, there are concurrent findings against the petitioner-tenant on the point of requirement of the premises by the landlord for his reasonable and bonafide need and those findings were not challenged by the appellant either before the first appellate court or even in the instant writ petition, which is directed against the judgment and order dated 30.6.1988 in Civil Appeal No.72 of 1986. Against the

backdrop of these facts, in the present writ petition we are concerned only with the question of hardship. If the findings of the appellate court on the point of greater hardship are set aside, the petition would succeed. Similarly, insofar as bonafide requirement is concerned, the learned counsel for the petitioner could not and did not dispute that those findings have attained finality. It is true, the learned counsel for the petitioner, though initially made an attempt to address the court on the point of bonafide requirement of the landlord, in view of the facts mentioned hereinabove, he confined his argument only on the point of comparative hardship.

4. The legal position as to how the issue of comparative hardship should be and ought to be examined by the court is now well settled. In **Bega Begum and ors Vs. Abdul Ahad Khan (dead) by L.Rs and ors, AIR 1979 Supreme Court 272**, the Supreme Court has observed that each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiff to prove that lesser disadvantage will be suffered by the defendants and that they were remediable. But, it is enough for the plaintiff to plead and prove that besides the suit premises, he has no other accommodation of his own to meet his

requirement which is set up in support of the ground of reasonable and bonafide requirement. On the other hand, the tenant has not only to plead but, also prove the fact that it is impossible to get any other alternative accommodation in the city. If the tenant fails to do so, the issue will have to be answered against the tenant. In **Dr.Ranbir Singh Vs Asharfi Lal, 1995 (6) S.C.C.580**, the Supreme Court has observed that the Court has to take into account all the attending circumstances and if the tenant has failed to plead and prove the fact that it is impossible to get alternate accommodation in the same locality or for that matter, in the same city, then the issue will have to be answered against the tenant. The tenant is also obliged to establish that during the long drawn pendency of litigation he made sincere attempt to secure alternative accommodation and was unable to get it. He is not expected to remain idle, awaiting for the result of the suit. In the present case, in my opinion, the tenant has failed to prove the fact that it is impossible to get any other alternative accommodation in the city. As a matter of fact, he does not seem to have made any efforts to secure alternative accommodation and that he was unable to get it. It is against this backdrop, all the attending circumstances will have to be taken into consideration while considering as to whom greater

hardship would be caused. This will have to be examined in the light of the fact that the suit premises is the only premises owned by the landlord where he can accommodate his whole family.

5. The trial Court considered the issue of comparative hardship and recorded its findings in paragraph 11, insofar as the present defendant no.2 is concerned, holding that greater hardship would be caused to the appellant if the suit is decreed.

> "11. On the other hand, as per defendant no.2's evidence, it is clear that he has got six members in his family. As per his deposition all the members in his family are dependant on him. This fact has not been challenged by the plaintiff. Besides, defendant no.2 is a businessman and he has to roam about for his business. He is 66 years old and still he has got much responsibility to be fulfilled. The fluctuating nature of the occupation of defendant no.2, does not have any guarantee for him to save money and construct a house or look for another house on more rent. Therefore, it is quite plausible that defendant no.2 would suffer greater hardship than plaintiff if the decree for eviction is passed. Therefore, as regards with the point of hardship, although the plaintiff has proved his bonafide requirement. So far as hardship is concerned, defendant no.2 has got a good case and therefore decree for eviction cannot be passed against defendant no.2. Therefore, I hold this issue accordingly."
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> (emphasis supplied)

6. As against this, it has come on record that the

landlord, who lost his parents in his childhood, has been brought up by his maternal uncle and aunts and all through out he has been staying with them. He has contended that his maternal aunts and uncle looked after him during his childhood like his natural parents and, therefore, he has all affection for them. After his marriage, his wife deserted him and their children in 1983 itself. She left him since she could not adjust with his maternal aunts and uncle in their house. It has also come on record that accommodation, where he is staying with his uncle and aunts, is insufficient and, therefore, he filed the present suit for possession on the ground available under section 13(1)(g). It is true that the landlord has received possession of six rooms from defendant no.1 out of 14 and eight rooms are in possession of defendant no.2. Though the number of rooms is fourteen, most of the rooms are small of 10‘x 6‘, 11‘x6‘, 8‘x6‘ etc. The six rooms of which the landlord got possession, looking to their sizes and locations in the house of 14 rooms, in my opinion, are not sufficient. The landlord will not be able to stay comfortably unless he gets possession of at least 4-5 rooms more. The parties tried to settle, but they found it difficult to divide the house. It is now well settled that the landlord is the best judge of his residential requirement. He has complete freedom in the

matter. It is no concern of the courts to dictate to the landlord, how and in what manner he should live. There is no law which deprives the landlord of the benefits of his enjoyment of his property. This well settled position in law cannot be overlooked in the present case. Defendant no.2 has six members in his family. Though he has been staying in the suit premises for last several years, at no stage he made efforts to find a suitable alternative accommodation for himself and his family. Merely because he has got more responsibilities to perform, does not mean that he need not make efforts to find alternative accommodation and sit idle and wait for the result of the suit. The children of the landlord, who were small in 1983, have, now, reached the marriageable age. Moreover, he has stated that he wants to bring his maternal uncle and aunts to stay with him in the suit premises, who looked after him during his childhood and have now become old. He wants them also to stay along with him in the suit house. The expectation of the landlord, in my opinion, is absolutely reasonable. He spent his childhood at the mercy of his relatives and his youth in fighting this litigation. In the circumstances, the findings recorded by the appellate court on the point of hardship do not warrant any interference by this court under Article 227 of the Constitution of India. The writ petition,

therefore, fails and dismissed as such. As a consequence thereof, the civil application stands disposed of.

(D.B.BHOSALE,J.)